

**IN THE COURT OF APPEALS OF IOWA**

No. 0-493 / 09-1494  
Filed August 25, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**PAM RAE JEAN ROBBINS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Marshall County, Carl D. Baker,  
Judge.

Defendant appeals the district court decision denying her motion to  
suppress evidence obtained as a result of a search warrant. **REVERSED AND  
REMANDED.**

Chad R. Frese of Kaplan, Frese & Nine, L.L.P., Marshalltown, for  
appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Jennifer Miller, County Attorney, and James S. Scheetz, Assistant  
County Attorney, for appellee.

Considered by Sackett, C.J., Potterfield, J., and Mahan, S.J.\* Tabor, J.,  
takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MAHAN, S.J.**

**I. Background Facts & Proceedings**

On February 26, 2009, deputy Bruce Rhoads of the Tama County Sheriff's Department filed applications for search warrants at 506 North First Street and 110 North Ninth Street in Marshalltown. Pamela Robbins resided at the First Street address and Michael Watson resided at the Ninth Street address. The application recited Watson's history of methamphetamine manufacturing, beginning in 1999.

Deputy Rhoads provided an affidavit stating that in October 2008 a concerned citizen reported suspicious traffic coming and going from Watson's residence. In February 2009, a Kmart pharmacy reported Watson had been buying pseudoephedrine, and that usually after he did so Robbins bought pseudoephedrine. A check of four pharmacies in Marshalltown showed Watson had purchased pseudoephedrine twenty-seven times between March 7, 2008, and February 18, 2009, and Robbins had purchased pseudoephedrine twenty-five times during the same time period. Several times Watson and Robbins bought pseudoephedrine on the same day. Robbins's vehicle was seen parked at Watson's residence on February 25 and 26, 2009.

A judge granted the application for the search warrants based on the information in the application and the deputy's affidavit. The search warrants were executed on February 27, 2009. Drug-related items were found at both residences, and multiple drug charges against Robbins and Watson were filed, including manufacturing methamphetamine and possession of precursors.

Robbins filed a motion to suppress claiming the search warrant application was defective because the affidavit did not provide probable cause to search her residence, the information in the affidavit was stale, and the affidavit was misleading. The district court denied the motion to suppress, finding there was probable cause for the search warrant based on: (1) Deputy Rhoads's experience and knowledge; (2) Watson's criminal history; (3) the purchase of pseudoephedrine by Watson and Robbins; and (4) the report of suspicious traffic in Watson's neighborhood.

Robbins sought discretionary review of the district court's ruling. The Iowa Supreme Court granted Robbins's request for discretionary review. The district court proceedings were stayed pending appellate review.

## **II. Standard of Review**

Our review of constitutional challenges is de novo. *State v. Shanahan*, 712 N.W.2d 204, 210 (Iowa 2006). In conducting a de novo review, we make an independent evaluation of the evidence based on the totality of the circumstances as shown by the entire record. *State v. Brooks*, 760 N.W.2d 197, 204 (Iowa 2009).

## **III. Merits**

Robbins's appellate brief points out that the sole issue on appeal is whether the district court erred in denying her motion to suppress as it pertained to her residence on First Street. She claims the search warrant application did not contain probable cause to believe that items that were criminal in nature would be found at her residence. She states the only information relating to her is that she purchased pseudoephedrine on several occasions. There is nothing

in the search warrant application stating her purchases were illegal, either in amount or frequency. Robbins asserts there was no information linking her to the manufacture of methamphetamine.

Under the Fourth Amendment, a search warrant must be supported by probable cause. *State v. Gogg*, 561 N.W.2d 360, 363 (Iowa 1997). “There is probable cause to conduct a search if, under the totality of the circumstances, ‘a person of reasonable prudence would believe that evidence of a crime might be located on the premises to be searched.’” *State v. Nitcher*, 720 N.W.2d 547, 554 (Iowa 2006) (citation omitted). The warrant must establish a nexus between the criminal activity, the place to be searched, and the items sought to be seized. *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006). If a warrant is not supported by probable cause, evidence seized pursuant to the warrant must be suppressed. *State v. Seager*, 571 N.W.2d 204, 210 (Iowa 1997).

The district court listed four factors to support probable cause for the search warrant:

- (1) Deputy Rhoads’s experience with and knowledge of the methods and ingredients used to manufacture methamphetamine;
- (2) Michael Watson’s criminal history and his history of drug use;
- (3) the Sudafed/pseudoephedrine purchases made by Watson and Robbins; [and] (4) the report from a person in Watson’s neighborhood about frequent and suspicious vehicle traffic at Watson’s residence.

Only one of these four factors relates to Robbins—the purchase of pseudoephedrine. There was no information alleging Robbins purchased more pseudoephedrine than permitted by law, or that she purchased it more often than permitted. See Iowa Code § 124.213 (2009). The legal purchase of pseudoephedrine, standing alone, does not present sufficient probable cause for

the search of Robbins's home. Furthermore, the fact that Robbins's vehicle was seen at Watson's residence does not provide any information about criminal activity at Robbins's home. There was no information in the search warrant application establishing a nexus between Robbins's residence and any suspected criminal activity.

We conclude the search warrant application for Robbins's residence was not supported by probable cause. Because we find this issue dispositive, we do not address the other issues raised by Robbins in this appeal. Additionally, this appeal does not raise any issues in regard to the search of Watson's residence, and we make no findings in that regard. We determine the district court should have granted Robbins's motion to suppress. We reverse the decision of the district court and remand for further proceedings.

**REVERSED AND REMANDED.**